

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1908

IN THE MATTER OF:

Served October 20, 1978

Petition of HIGHVIEW BUS SERVICE,)
INC., for Temporary Suspension of)
Certificate No. 42)

Case No. MP-78-14

On September 22, 1978, Highview Bus Service, Inc. (Highview), filed the above-captioned petition for temporary suspension of its Certificate of Public Convenience and Necessity No. 42 which authorizes four specified regular routes, serving no intermediate points, between the Government Printing Office, North Capitol and H Streets, N. W., Washington, D. C., on the one hand, and, on the other, (1) Penn-Mar Shopping Center, Greenbelt, Md., (2) Woolco Department Store, New Carrollton, Md., (3) Greenbelt Shopping Center, Greenbelt, Md., and (4) Capitol Plaza, Bladensburg, Md. The service is provided at a per capita rate of \$25 per month in school buses, although the authority is not restricted to such vehicles.

The petition indicates that it was filed pursuant to Title II, Article XII, Section 4(1) of the Compact and Regulation 59-06. Regulation 59-06 deals with suspension of the proposed effective date of change or abandonment of a route pending an investigation or hearing. Since Highview here seeks neither change nor abandonment of a route, but merely temporary suspension, Regulation 59-06 is inapplicable. However, the cited section of the Compact is relevant and states,

No carrier shall abandon any route specified in a certificate issued to such carrier under this section, unless such carrier is authorized to do so by an order issued by the Commission. The Commission shall issue such order, if upon application by such carrier, and after notice and opportunity for hearing, it finds that the abandonment of such route is consistent with the public interest. The Commission, by regulations or otherwise, may authorize such temporary suspensions of routes as may be consistent with the public interest. The fact that a carrier is operating a route or furnishing a service at a loss shall not, of itself, determine the question of whether abandonment of the route or service over the route is consistent with the public interest as long as the carrier earns a reasonable return. (Emphasis supplied.)

All of the language in the cited section, except the one underlined sentence, deals with abandonment of a route. Only the underlined portion deals with "temporary suspensions", and the use of the words "may authorize" clearly indicates such suspension is discretionary, provided that it would be "consistent with the public interest".

In support of its petition, Highview asserts that its president, the only person "qualified" to operate the company, is severely ill and that the company is encountering financial problems caused by an increase in its insurance premiums, which, in turn, are exacerbating its president's health problems. Finally, Highview asserts that alternative transportation is (or will soon be) available from the Washington Metropolitan Area Transit Authority (Metro).

In granting Highview its Certificate No. 42, the Commission was obligated to find, based upon the evidence of record, that the transportation at issue here is required by the public convenience and necessity. The Commission's sympathy concerning the health of Highview's president cannot override the corporation's obligation to the many individuals who have come to depend upon this service. As for Highview's financial problems, its own petition for temporary suspension has foreseen that the appropriate remedy is to seek an adjustment of its rates. Finally, with respect to the assertion of alternative service availability, Highview's petition admits that transferring and inconvenience are involved.

While questioning its own six witnesses in support of its application at a public hearing on March 31, 1977, Highview asked if there were any comparable service available. Half of these witnesses testified that driving or carpooling would be the alternative; the remainder simply indicated there was no comparable service. Highview cannot expect so easily to overcome the sworn testimony of its own witnesses.

The matters raised by Highview in its petition fail to show conclusively that the requested temporary suspension is consistent with the public interest. However, the petition raises certain issues which should not be ignored.

First, with respect to the initial application for authority, the Commission found that Highview was "fit, willing and able"^{1/} to perform the transportation properly. The petition raises the issue whether, by reason of its president's health, Highview's fitness, willingness and ability are so impaired as to render it incapable of properly performing the service.

^{1/} Compact, Title II, Article XII, Section 4(b).

Next, the petition raises the issue whether the authorized fares are just and reasonable in light of Highview's recent financial problems. Normally, management would be expected to respond to this situation by processing an application for increased fares. In this case, however, we have already noted the unresolved issue of Highview's management capability. This appears to be an appropriate time for the Commission to exercise its initiative under the Compact, Title II, Article XII, Section 6(b), which states,

Whenever, upon complaint, or upon its own initiative, and after hearing held upon reasonable notice, the Commission finds that any individual or joint fare in effect for transportation subject to this Act, or any regulation or practice affecting such fare, is unjust, unreasonable or unduly preferential or unduly discriminatory, the Commission shall issue an order prescribing the lawful fare, regulation, or practice thereafter to be in effect.

Accordingly, a public hearing will be scheduled to consider the requested temporary suspension,^{2/} to consider the reasonableness of the authorized fares,^{3/} and to investigate Highview's management capability.^{4/}

Highview will be required to undertake a special effort to assure that its passengers are fully advised of these proceedings. Highview will also be required to submit a current operating statement and a projected operating statement for a 12 month period, both prepared in appropriate detail and accompanied by all backup material necessary to support those statements. Highview should also prepare an exhibit indicating what rates it considers necessary to earn a reasonable profit on its certificated operations. Highview will be assessed an amount preliminarily estimated to cover the cost of the proceedings.

Finally, because the ongoing viability of Highview as a certificated carrier is at stake here, this proceeding shall also constitute an initial inquiry pursuant to the Compact, Title II, Article XII, Section 4(g), which provides, in part, that a "... certificate, may ... on the Commission's own initiative, after notice and hearing, be suspended, changed, or revoked"

^{2/} Pursuant to the Compact, Title II, Article XII, Section 4(i).

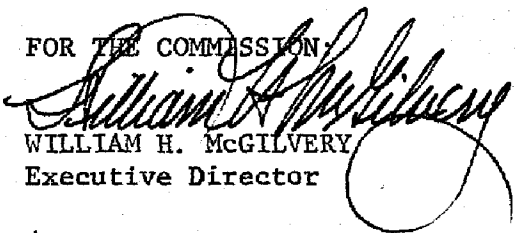
^{3/} Pursuant to the Compact, Title II, Article XII, Section 6(b).

^{4/} Pursuant to the Compact, Title II, Article XII, Section 13(b).

THEREFORE, IT IS ORDERED:

1. That the above-described matters are hereby scheduled for public hearing at 9:30 a.m., on Friday, November 17, 1978, in the Hearing Room of the Commission, Room 314, 1625 I Street, N. W., Washington, D. C. 20006.
2. That Highview Bus Service, Inc., post notice of the public hearing in each of its buses operating over the affected routes, in the form prescribed by the staff of the Commission, continuously from Wednesday, November 1, 1978, through the date of the public hearing.
3. That on Wednesday, November 1, 1978, Highview shall distribute to each passenger a copy of this order, sufficient copies to be provided by the staff at the office of the Commission during its regular business hours on any working day between Wednesday, October 25, 1978, and Tuesday, October 31, 1978.
4. That Highview Bus Service, Inc., shall produce at the public hearing an affidavit that notice of the hearing has been posted and handed out in accordance with the requirements of this order.
5. That Highview Bus Service, Inc., shall file with the Commission not later than Friday, November 10, 1978, six copies of a current operating statement and a projected revenue and revenue deductions statement for the year ending December 31, 1979, for the involved certificated routes, at present rates and at such rates as it believes would afford it an opportunity to earn a reasonable rate of return, and shall produce the originals thereof at the public hearing.
6. That Highview Bus Service, Inc., shall present at the public hearing such evidence as it considers relevant to its management capability.
7. That Highview Bus Service, Inc., is hereby assessed \$350 pursuant to Title II, Article XII, Section 19 of the Compact, and directed to deliver said amount to the office of the Commission, Suite 316, 1625 I Street, N. W., Washington, D. C. 20006, no later than Friday, November 10, 1978.
8. That any person desiring to protest shall file a protest in accordance with Commission Rule 14, or any person desiring to be heard in this matter shall so notify the Commission, in writing, no later than Friday, November 10, 1978, and shall mail a copy of such protest or notification to counsel for Highview Bus Service, Inc., Lawrence E. Lindeman, Esquire, 1032 Pennsylvania Building, 425 - 13th Street, N. W., Washington, D. C. 20004.

FOR THE COMMISSION:


WILLIAM H. MCGILVERY
Executive Director